

STATE OF MICHIGAN
COURT OF APPEALS

TIMOTHY RICHARD GUILLES, a/k/a TIM
GUILLES,

UNPUBLISHED
March 26, 2009

Plaintiff-Appellee,

v

JEANINE LEA GUILLES,

No. 282502
Kent Circuit Court
LC No. 06-002611-DO

Defendant-Appellant.

Before: Cavanagh, P.J., and Fort Hood and Davis, JJ.

PER CURIAM.

Defendant appeals as of right a spousal support award contained in the parties' judgment of divorce. We vacate the trial court's award of spousal support, affirm the judgment in all other respects, and remand for further proceedings consistent with this opinion. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Plaintiff filed a complaint for divorce, and a dispute concerning property rights and other issues ensued. Eventually, the parties placed a settlement agreement on the record. Plaintiff's attorney recited the following pertinent terms to the court:

In addition to the proofs, the normal provisions that are found typically in most judgments of divorce. With regard to the marital home of the parties, which is jointly titled, Mrs. Guiles will be transferring ownership of that to Mr. Guiles.¹

* * *

With regard to the alimony provisions, the parties have agreed that Mr. Guiles will pay alimony of not more than \$1,050 per month until Mrs. Guiles reaches the age of 60. And it will terminate on her 60th birthday. *It will be non-modifiable as far as Mrs. Guiles is concerned.* It is modifiable only to Mr. Guiles

¹ We note that the trial court altered this language from that found in the original transcript, which the trial court found had been mistranscribed. These minor changes do not affect our analysis.

and it's *only modifiable if there is a significant modification in his employment or a termination of his employment.*

As the Court is aware, he's employed at General Motors. If everything continues basically as it is, we will obviously not be petitioning for a modification, but with the current upheaval in the automotive industry, if there is something that results in a dramatic increase or decrease in his income--a decrease, essentially, we would have the right to come back to the Court and ask for a modification of the alimony or spousal support.

Plaintiff prepared a judgment of divorce. Notwithstanding the terms of the parties' agreement, the judgment contained a provision modifying the spousal support award upon the death of either of the parties, defendant achieving her sixtieth birthday, defendant's remarriage, or "the defendant co-habiting with an adult, non-relative male. During a subsequent hearing on plaintiff's motion to enter judgment, defendant challenged the inclusion of the language concerning remarriage or cohabitation, or plaintiff's death. However, the trial court overruled her objections, concluding:

Obviously, for example, this judgment can be 10—15 pages long. We don't put every single thing on there. There,--especially with support, there's tons of provisions that apply. I believe that these are standard provisions that are found in most judgments of divorce. I believe that in negotiating, that these are standard provisions that are included. Accordingly, I'm going to allow those to be in the judgment. I think it's appropriate and fair under the totality of the circumstances of the settlement.

The trial court subsequently denied defendant's motion to amend the judgment of divorce.

Defendant argues that the trial court clearly erred when it found that the additional terms in the spousal support award were "standard provisions that are found in most judgments of divorce" and that the parties intended to include them in their settlement agreement. We agree.

In general, we review a trial court's determination regarding spousal support for an abuse of discretion. *Olson v Olson*, 256 Mich App 619, 631; 671 NW2d 64 (2003). We review a trial court's factual findings in relation to an award of spousal support for clear error. *Id.* at 629. When the trial court's factual findings comport with the evidence, "this Court must then decide whether the dispositional ruling was fair and equitable in light of the facts. The trial court's decision regarding alimony must be affirmed unless the appellate court is firmly convinced that it was inequitable." *Id.*, citing *Sparks v Sparks*, 440 Mich 141, 151-152; 485 NW2d 893 (1992).

However, under MCR 2.507(G), a party is bound by the terms of a settlement agreement placed on the record.² An agreement to settle a lawsuit, including a suit for divorce, is a contract,

² MCR 2.507(G), formerly MCR 2.507(H), provides in pertinent part:

(continued...)

and general contract principles apply. *Scholnick's Importers-Clothiers, Inc v Lent*, 130 Mich App 104, 109; 343 NW2d 249 (1983); *Kline v Kline*, 92 Mich App 62, 71; 284 NW2d 488 (1979). Absent a showing of fraud, duress, or similar factors, it is appropriate for a court to enforce the terms of the parties' agreement. *Massachusetts Indemnity & Life Ins Co v Thomas*, 206 Mich App 265, 268; 520 NW2d 708 (1994); *McBride v Foutch*, 140 Mich App 837, 841; 366 NW2d 58 (1985); *Kline, supra* at 71-72. The primary goal regarding the construction or interpretation of a contract, including a settlement agreement, is to honor the parties' intent. *Mikonczyk v Detroit Newspapers, Inc*, 238 Mich App 347, 349-350; 605 NW2d 360 (1999). A judgment of divorce "entered upon the settlement of the parties . . . represents a contract, which, if unambiguous, is to be interpreted as a question of law." *In re Lobaina Estate*, 267 Mich App 415, 417-418; 705 NW2d 34 (2005). Absent fraud or duress, or other circumstances that would lead the court to find that the contract was "contrary to public policy", the trial court is not free to modify the plain language of the agreement on the ground that another interpretation is more reasonable. See *Holmes v Holmes*, ___ Mich App ___, ___ NW2d ___ (2008), slip op at 12 (quotation omitted).

We hold that the trial court erred when it ignored the plain language of the parties' agreement and included the provisions ending spousal support upon defendant's remarriage or cohabitation. The language chosen by the parties above clearly stated that the spousal support award was not modifiable as to defendant, but would continue to her sixtieth birthday. In contrast, plaintiff presents nothing to support his assertion, and the trial court's decision, that the provisions were so standard as to fall within the somewhat ambiguous language in the agreement. He maintains that these were "'normal provisions that are found typically in most judgments of divorce' in Kent County, Michigan", but provides nothing to support this assertion.

Nor do we find that MCL 552.13(2) supports plaintiff's position that the general language at the beginning of the agreement above necessitates an inclusion of a provision terminating spousal support upon defendant's remarriage. As defendant notes, termination of spousal support due to remarriage is not mandatory under MCL 552.13(2). Nor would this statutory language support the trial court's provision terminating spousal support due to cohabitation.

Similarly, the specific language used by the parties precludes the trial court from adding the provision that terminated spousal support upon plaintiff's death. While the parties agreed to consider modification of spousal support if plaintiff's income dramatically decreased, the language used essentially amounted to agreement that the spousal support would be in gross, which is in the nature of a property division and is not subject to modification. See *Staple v Staple*, 241 Mich App 562, 566; 616 NW2d 219 (2000). An agreement to such non-modifiable spousal support is permissible. *Id.* at 568-569. In addition, "a trial court may retain jurisdiction, after a party's death, to enforce a divorce decree." *Easley v John Hancock Mut Life Ins Co*, 403

(...continued)

Agreements To Be in Writing. An agreement or consent between the parties or their attorneys respecting the proceedings in an action, subsequently denied by either party, is not binding unless it was made in open court, or unless evidence of the agreement is in writing, subscribed by the party against whom the agreement is offered or by that party's attorney.

Mich 521, 523; 271 NW2d 513 (1978). Thus, under the circumstances, the trial court should not have included language in the divorce decree terminating spousal support upon plaintiff's death.³

Therefore, we find that the trial court should not have imposed the limitations above on defendant's spousal support as if they were included as part of the parties' agreement. The imposed limitations directly contradict the unambiguous language in the spousal support portion of the agreement.

We vacate that portion of the judgment of the divorce dealing with spousal support, and remand this case to the trial court with instructions that the trial court amend the judgment to remove the challenged spousal support limitations. The judgment is affirmed in all other respects. We do not retain jurisdiction.

/s/ Michael J. Cavanagh
/s/ Karen M. Fort Hood
/s/ Alton T. Davis

³ Given the language the parties used, it is questionable whether the trial court should have included the provision terminating spousal support on defendant's death. However, since defendant does not challenge this provision, we need not decide that issue.